

Rule 29. Oral argument.

(a) *In general.* Oral argument will be allowed in all cases unless the court concludes:

(a)(1) The appeal is frivolous or inadequately briefed; or

(a)(2) The dispositive issue or set of issues has been recently authoritatively decided; or

(a)(3) The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) Notice by clerk and request by a party for argument; continuance. Not later than 30 days prior to the term of court in which a case is to be submitted, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Any party may waive oral argument by filing a written waiver with the clerk not later than 15 days from the date of the clerk's notice. If one party waives oral argument and any other party does not, the party waiving oral argument may nevertheless present oral argument. A request to continue oral argument or for additional argument time must be made by motion. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(c) Order of argument. The appellant shall argue first and the appellee shall respond. The appellant may reply to the appellee's argument if appellant reserved part of appellant's time for this purpose. Such argument in reply shall be limited to answering points made by appellee in appellee's oral argument.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a separate appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If

31 separate appellants support the same argument, care shall be taken to avoid
32 duplication of argument. Unless otherwise agreed by the parties, in cases involving a
33 cross-appeal the appellant, as determined pursuant to Rule 24(g), shall open the
34 argument and present only the issues raised in the appellant's opening brief. The
35 appellee/cross-appellant shall then present an argument which answers the appellant's
36 issues and addresses original issues raised by the cross-appeal. The appellant shall
37 then present an argument which replies to the appellee/cross-appellant's answer to the
38 appellant's issues and answers the issues raised on the cross-appeal. The
39 appellee/cross-appellant may then present an argument which is confined to a reply to
40 the appellant's answer to the issues raised by the cross-appeal. The court shall grant
41 reasonable requests, for good cause shown, for extended argument time.

42 (e) Non-appearance of parties. If the appellee fails to appear to present argument,
43 the court will hear argument on behalf of the appellant, if present. If the appellant fails
44 to appear, the court may hear argument on behalf of the appellee, if present. If neither
45 party appears, the case may be decided on the briefs, or the court may direct that the
46 case be rescheduled for argument.

47 (f) Submission on briefs. By agreement of the parties, a case may be submitted for
48 decision on the briefs, but the court may direct that the case be argued.

49 (g) Use of physical exhibits at argument; removal. If physical exhibits other than
50 documents are to be used at the argument, counsel shall arrange to have them placed
51 in the courtroom before the court convenes on the date of the argument. After the
52 argument, counsel shall remove the exhibits from the courtroom unless the court
53 otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after
54 notice is given by the clerk, they shall be destroyed or otherwise disposed of as the
55 clerk shall think best.

56 **Advisory Committee Notes**

57 The former practice was to presume that argument was waived unless requested.
58 The amendments change the practice to presume that argument is requested unless
59 expressly waived.

60 The rule incorporates the oral argument priority classification formerly found in the

Rule 29.

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61 administrative orders of the Supreme Court.